INDEX

Opinions Below 1

Jurisdiction 1

Question Presented 2

Statement:

A. Immediate Plan to Completely Desegregate Faculty 2

B. Extensive Numerical Progress in Faculty Desegregation 4

C. Demonstrated Meaningful Good Faith Compliance With Constitutional Mandates to Achieve a Racially Nondiscriminatory School System 6

Argument:

Reasons for Disallowance of Writ:

I. Requirement of Mathematical Ratios in Faculty Transfer and Assignment is Unwarranted Under Facts and Applicable Law 8

II. Requirement of Mathematical Ratio Would Defeat Ultimate Objective of Complete Faculty and Staff Desegregation 12

III. The Requirement of Faculty Desegregation Without Mathematical or Racial Ratio Percentages Does not Conflict with Prior Decisions of the Fifth Circuit, Other Circuit Courts of Appeal, or With Applicable Decisions of the Supreme Court of the United States ... 14

IV. To Require a School Board Which is Making Meaningful and Immediate Progress in Faculty and Staff Desegregation to Adopt "Mathematical Racial Ratio" as "Ultimate Objective" is Unwarranted and Premature ... 18

Conclusion 20

Appendix A 21

Appendix B 25

TABLE OF CASES

Board of Education of Oklahoma City v. Dowell 375 F. 2d 158 (10 Cir. 1967) cert. denied 387 U. S. 931 (1967) 16

Bowman v. County Board of Charles City County, Virginia, 382 F. 2d 326 (4 Cir. 1967) 15

Bradley v. School Board of Education of City of Richmond, 382 U. S. 103, 15 L. Ed. 2d 187, 86 S. Ct. 224 (1965) 17, 18

Brown v. Board of Education, 347 U. S. 483, 98 L. Ed. 873, 74 S. Ct. 686 18

Brown v. Board of Education, 349 U. S. 294, 99 L. Ed 1083, 75 S. Ct. 753 18

Carr, et al., v. Montgomery County Board of Education, et al., 289 F. Supp. 647 ..... 1, 2, 3, 9

Coppedge v. Franklin County Board of Education, 273 F. Supp. 289 (E. D. N. C. 1967) aff'd 394 F. 2d 416 (4 Cir. 1968) 17

Davis v. Board of School Commissioners of Mobile, 393 F. 2d 690 (5 Cir., March 1968) 15

Dowell v. School Board of Oklahoma City, 244 F. Supp. 971 ..... 13, 16

Green v. County School Board of New Kent County, 391 U. S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968) 9, 12, 18

Hobson v. Hansen, 269 F. Supp. 401 13

Kelley v. Altheimer, Arkansas Public School District, 378 F. 2d 483 (8 Cir. 1967) 15

Kier v. County Board of Augusta County, Virginia, 249 F. Supp. 239 (W. D. Va. 1966) 17

Lee, et al., v. Macon County Board, et al., 267 F. Supp. 458 (M. D. Ala. 1967) 15

Maryland v. Baltimore Radio Show, Inc., 338 U. S. 912, 94 L. Ed. 562, 70 S. Ct. 252 20

Montgomery County Board of Education, et al., v. Carr, et al., 400 F. 2d 1 (5 Cir. 1968) 1, 2, 3, 6, 8, 11, 19

Montgomery County Board of Education, et al., v. Carr, et al., 402 F. 2d 782 (5 Cir. 1968) 1

Stell v. Board of Public Education for City of Savannah, 387 F. 2d 486 (5 Cir., December 1967) 14

United States v. Board of Education of the City of Bessemer, et al., 396 F. 2d 44 (5 Cir. 1968) 11, 12, 14, 19

United States v. Jefferson County Board of Education, 372 F. 2d 836, aff'd en banc, 380 F. 2d 385, (5 Cir. 1967) cert. denied 389 U. S. 840, 19 L. Ed 2d 104, 88 S. Ct. 77 (1967) 3, 11, 12, 14, 15

Yarbrough v. Hulbert-West Memphis School District No. 4, 380 F. 2d 962 (8 Cir. 1967) 15

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 798

UNITED STATES OF AMERICA,

PETITIONER,

v.

MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL.,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 404) as modified and amended (R. 428) is reported at 289 F. Supp. 647. The opinion of the Court of Appeals is reported at 400 F. 2d 1. The orders of the Court of Appeals denying rehearing, denying rehearing en banc and dissenting opinions are reported at 402 F. 2d 782.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

QUESTIONS PRESENTED

Must a school board, which has adopted immediate plans to completely desegregate its faculty, which has already made extensive numerical progress in faculty desegregation and which has consistently demonstrated meaningful good faith compliance with constitutional mandates to achieve a racially nondiscriminatory school system, be forced to assign faculty members according to a mathematical ratio fixed by the racial balance of the entire faculty?

STATEMENT

A. *IMMEDIATE PLAN TO COMPLETELY DESEGREGATE FACULTY.* The majority decision of the Court of Appeals, in affirming with modification the decision of the District Court, reiterated the school board's duty to desegregate its faculty and staff. The Court of Appeals stated that: "School boards must not use excuses to delay the achievement of full faculty and staff desegregation." (400 F. 2d 1 at p. 9).

The Court of Appeals made the following two modifications of the District Court's order:

First, the Court of Appeals ruled that the Montgomery County Board of Education, as a beginning in the 1968-1969 school year should have a ratio of at least substantially or approximately one to five faculty and staff members being of a different race from the majority. The District Court in the order of February 24, 1968, as amended on March 2, 1968, had ordered a strict one of every six faculty and staff members to be of a race different from the majority. (289 F.

Supp. 647 at p. 654). The Court of Appeals in making this modification recognized "the difficulties inherent in achieving a precise five-to-one ratio." (400 F. 2d 1 at p. 8).

Secondly, the Court of Appeals held that: "Although a ratio of substantially or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective." (400 F. 2d 1 at p. 8).

The District Court had ordered such a three to two ratio as the "ultimate objective" in faculty desegregation. (289 F. Supp. 647 at p. 658).

The Montgomery County Board of Education fully recognizes its constitutional duty to desegregate the faculty throughout this system to the end that "the pattern of teacher assignment to any particular school shall not be identified as tailored for a heavy concentration of either Negro or white pupils in the schools." (R. 370 and *U. S. v. Jefferson County Board of Education,* 372 F. 2d 836, aff'd en banc, 380 F. 2d 385, (5 Cir. 1967), cert. denied 389 U. S. 840, 19 L. Ed 2d 104, 88 S. Ct. 77 (1967). The fact that faculties in 53 out of 54[1] schools in this system have already in fact been desegregated shows that this plan has been immediately implemented.

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[1] The small, three teacher and predominately white rural school located at Pine Level, Alabama has not yet desegregated its full-time faculty. The three teachers in this school live nearby and have been teaching at the Pine Level, Alabama school for many years. The school board has definite plans and is committed to add a Negro teacher to the Pine Level school in the 1969-1970 school year.

B. EXTENSIVE NUMERICAL PROGRESS IN FACULTY DESEGREGATION. Pursuant to the Board's avowed plan and in accord with the directives of the Court of Appeals, progress in faculty desegregation has been accomplished and reported to the District Court. "Appendix A" (pp. 21-24 infra) to this brief is the portion of the report filed with the District Court on September 16, 1968, pertaining to full-time faculty desegregation.[2] This report shows 212 full-time faculty members to be teaching in 53 schools throughout the Montgomery County system where their race is presently in the minority.[3] The total full-time classroom faculty of the Montgomery system presently consists of 1,389 teachers. As previously noted, every school in the system now has a desegregated full-time faculty with the exception of the small predominately white rural school at Pine Level, Alabama.

The supplemental report which is attached as "Appendix B" (pp. 25-31 infra) to this brief was filed pursuant to the District Court's directive.[4] This report shows that during the school year commencing in

[2] This report was filed pursuant to the June 1, 1967, order of the District Court as implemented by the order of February 24, 1968, as amended March 2, 1968. As this appendix shows, this report was served on the Government and on the Plaintiffs below.

[3] 111 Negro teachers in predominantly white schools and 101 white teachers in predominately Negro schools. (Appendix "A" to this brief, pp. 23-24, infra.)

[4] This report was filed pursuant to the June 1, 1967 order of the District Court as implemented by the order of February 24, 1968, as amended March 2, 1968. As this appendix shows, this report was served on the Government and on the Plaintiffs below.

September of 1968 through December 15, 1968, 618 days were taught by substitute teachers in schools where their race is presently in the minority.[5] There was a total of 2,516 days taught during this period by all substitute teachers in the system. The December 16, 1968 report additionally shows that 14 out of a total of 54 night school teachers are teaching in minority assignments,[6] and that current progress in student teacher assignments, which will be increased before student teachers begin work in the Spring of 1969, presently reflects 28 out of 155 student teachers assigned to schools where their race is presently in the minority.[7] (During the Spring of 1968 there were 44 out of 289 student teachers in schools where their race was in the minority.)

The December 16, 1968, report further shows that four teachers out of 17 hired since September, 1968, have been placed in schools where their race is presently in the minority.[8]

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[5] 300 days taught by Negro substitute teachers in predominately white schools and 318 days taught by white substitute teachers in predominately Negro schools. (Exhibit A of Appendix "B" to this brief, pp. 27-28, infra.)

[6] 8 white night school teachers in two predominately Negro schools and 6 Negro night school teachers in two predominately white schools. Only four schools in the system offer night school courses and the faculties of all of these have been desegregated. (Exhibit C of Appendix "B" to this brief, p. 30, infra.)

[7] Seven white student teachers presently in predominately colored schools and 21 Negro student teachers in predominately white schools. (Exhibit D of Appendix "B" to this brief, pp. 30-31, infra.)

[8] Three new white teachers in predominately Negro schools and one new Negro teacher in a predominately white school. (Exhibit B of Appendix "B" to this brief, p. 29, infra.)

As reflected in the aforementioned reports, *all* schools in the Montgomery County system are *now* experiencing desegregation either through their full-time faculties, student bodies, or through both.

C. *DEMONSTRATED MEANINGFUL GOOD FAITH COMPLIANCE WITH CONSTITUTIONAL MANDATES TO ACHIEVE A RACIALLY NONDISCRIMINATORY SCHOOL SYSTEM.* The Court of Appeals recognized that the District Court had publicly complimented the Montgomery County Board some five times during the period from 1964 to 1967 "on its efforts toward achieving desegregation." (400 F. 2d 1, at pp. 2-3.)

On September 5, 1964, the District Court stated:

"The Court now specifically finds and concludes that in the case of each of the applicants (colored children applying for attendance in predominately white schools) whether the application was granted or denied, the action of the Montgomery County school authorities constituted a good faith implementation of the governing constitutional principles and a good faith compliance with the orders of this court." (R. 150 and 9 Race Rel. L. Rep. 1175.)

On May 5, 1965, the District Court stated:

"Let me say this; that I recognize the problems that exist in this particular school district, and I think the plaintiffs recognize them, and both parties in this law suit have, up to this point, demonstrated to me an awareness of their responsibilities not only to their clients, but to the school system, and I want to congratulate and compliment both

the plaintiffs and particularly the school board, Montgomery County School Board, for its efforts as demonstrated last fall, in complying with the law as that law was reflected in the order of this Court." (R. 445.)

On August 27, 1965, the District Court stated:

"From the evidence in this case and from the history of this case as known by the Court, the defendant board and Superintendent have complied with and are continuing to comply with the applicable law as decreed by this Court on July 31, 1964." (R. 234.)

On May 25, 1967, the District Court stated:

"I would like to say this to you here in the presence of the plaintiffs' and the Government lawyers; that I am impressed that the Montgomery County Superintendent of Education and members of the Montgomery County School Board of Education now evidence and have in the past evidenced a desire and intent to operate a school system here in Montgomery County as professional educators and not as politicians. This present attitude is demonstrated here at this time; this past conduct on the part of these officials has, without any doubt inured to the benefit of the students regardless of their race, in Montgomery County that seek quality education. And I have observed and I have been impressed that these officials have accomplished this largely through—or this has been accomplished largely through their efforts and without any serious discord or disruption as far as any school is concerned. This, when it is compared with some other similar

operations, is a considerable feat, for which this Community, in my judgment, owes these school officials their appreciation. It evidences a pattern of professional conduct that other systems could, for the benefit of their students, emulate." (R. 448-449 and 400 F. 2d 1 at p. 3.)

Upon the conclusion of a hearing held on September 5, 1967, which is the first of the two hearings apparently forming the basis of the District Court's orders relating to faculty desegregation, the District Court stated from the bench:

"You are dealing here with a school system that you haven't had to take to your Appellate Courts a single time since you started. It is the only major school system in the State that you haven't had to do it on; that they have done what they have done in good faith, and they had been ahead of most of your other systems in every field." (R. 485 and 400 F. 2d 1 at pp. 3-4).

ARGUMENT

REASONS FOR DISALLOWANCE OF WRIT

I

REQUIREMENT OF MATHEMATICAL RATIOS IN FACULTY TRANSFER AND ASSIGNMENT IS UNWARRANTED UNDER FACTS AND APPLICABLE LAW.

The extensive progress which these respondents have made in faculty desegregation together with their avowed plans to further completely desegregate all faculties in the system renders the sweeping ratio requirement unnecessary and totally unjustified. The direction is clear. The objective is clear. The direction is

right. The objective is now being reached. The current school year, 1968-1969, is the second year this system has been engaged in teacher and staff desegregation.[9] In an area of human relations, as complex and delicate as that of pupil-teacher relations which is the virtual heartstring of education, tremendous progress has indeed already been made. The faculty in every school in the Montgomery County system, with the exception of the three-teacher school in Pine Level, has been desegregated; 212 teachers are now engaged in desegregated assignments, and substantial and real desegregation presently exists in the area of substitute teachers, student teachers and night school faculties.

The faculty desegregation plan in effect in the Montgomery System not only promises to work *now*; it is in fact working *now*. The letter and the spirit of *Green v. County School Board of New Kent County*, 391 U. S. 430, 20 L. Ed. 2d 716, 88 S. Ct. 1689 (1968), have been met.

With such a substantial plan to completely desegregate faculty why then do these respondents so strenuously object to the ratio requirements as urged by the government?

Our answer is two-fold: (1) The racial ratio requirement constitutes an arbitrary and unwarranted burden on this board and is not supported by the mandates of the United States Constitution or of this Court. (2) To require faculty assignment according to a racial ratio would be to lose sight of critical in-

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[9] On August 18, 1966, the District Court set the school year of 1967-1968 as the date to commence faculty desegregation in Montgomery County. (289 F. Supp. 647, footnote 1, at pp. 649-650.)

dividual criteria imperative in quality faculty relations —and would undoubtedly lower the educational opportunities of all children in this system, regardless of race.

We must also go behind numbers and statistics, which in themselves speak progress, and look to the ultimate solution of the complex problems to be encountered. The District Court apparently recognized the administrative problems inherent in faculty transfer when on March 2, 1968, seven days after the Court had ordered two minority teachers in schools with less than 12 faculty members, this directive of the District Court was changed to one such minority teacher. (R. 428-429.) The administrative problems which the District Court must have envisioned in the amended order will multiply a thousand fold as the problems of day to day school administration develop together with the ominous task of finding teachers with the requisite skills necessary for the replacement of transferred personnel. It was brought out during the hearing in the District Court, and it is only logical, that a teacher in a particular school may play the piano, have an interest and aptitude for extracurricular endeavors, such as student organizations and honor societies, or have an interest in student counselling as well as being a classroom teacher. The small school will encounter faculty placement problems varied and different from those encountered by the large school and the individual personality and motivation of each teacher is critical in faculty placement. The imparting of knowledge from teacher to child is a very delicate and personal endeavor.

The Court of Appeals recognized these critical problems in holding that "Although a ratio of substantial-

ly or approximately five to one is a good beginning, we cannot say that a ratio of substantially three to two, simply because it mirrors the racial balance of the entire faculty, must be achieved as a final objective. *Consideration must be given to the availability of teaching personnel, sound school administrative procedures and other important factors.*" (Emphasis ours.) (400 F. 2d 1, at p. 8.) The standard of quality education demands that utmost care be given to the placement of teaching personnel. It cannot possibly be in the best interest of the school children of this Country, regardless of race, to callously discard the vital considerations of proper faculty placement as being "vague notions which permit subjective discrimination." (Petition, p. 7.)

It is noted that the Court of Appeals of the United States for the Fifth Circuit on June 3, 1968, speaking through Chief Judge John R. Brown, expressly rejected the imposition of the very same mathematical ratio as here urged upon the Court. *United States v. Board of Education of the City of Bessemer, et al.*, 396 F. 2d 44 (5 Cir. 1968). The Court of Appeals in discussing *United States v. Jefferson County Board of Education*, supra, stated in the *Bessemer* case:

> "We are requested to do both too much and too little. The school boards with a sincerity of counsel we do not question, urge us, in effect, to do nothing specific either in terms of target dates or racial percentage ratios, or both. The government, on the other hand, proposes that we direct the entry of a proposed sweeping, detailed decree which it frankly acknowledges adds to and extends *Jefferson*. We think neither alternative is wise.

"First, we think it unwise and out of keeping with the declared goal and subsequent consistent practice of Circuit-wide uniformity to tinker with the model decree." (396 F. 2d 44 at pp. 49-50.)

The Court added:

"We think it important to do three positive things. The first is to rule out the voluntary approach. The second is to fix an immediate target date. The third is to fix the date—implicit in *Jefferson*—for full compliance." (396 F. 2d 44 at p. 50.)

The standards thus set forth by the Court of Appeals in *Bessemer* are equally applicable in Montgomery and provide a *realistic* plan that is working *now* to desegregate the faculty and staff of this system. *Green v. County School Board of New Kent County*, supra.

II

REQUIREMENT OF MATHEMATICAL RATIO WOULD DEFEAT ULTIMATE OBJECTIVE OF COMPLETE FACULTY AND STAFF DESEGREGATION.

The standard as adopted throughout the Country by which faculty desegregation is measured is that the assignment of teachers should be so "that the pattern of teacher assignment to any particular school should not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school." *United States v. Jefferson County Board of Education*, supra. A truly desegregated nonracially identified faculty is, of course, the real ultimate objective. There are many school systems throughout this Circuit and undoubtedly throughout the Nation which have very few or no colored teachers. There are other such systems which

have very few or no white teachers. This requirement, as sought by the government, of having the same ratio of majority to minority teachers in each school as is reflected by faculty distribution throughout the system (Petition, p. 5) is totally unrealistic and in many instances would "lock in" segregation. Some districts, as their "ultimate objective" would have over 80% of one race or the other teaching in each school in the system.[10] This situation, of course, is undesirable and places an impossible burden on school boards which are constantly competing with other boards for qualified Negro and white teachers, and an undue burden on the teachers themselves. The objective of uniformity would be lost with adoption of the government's position and lost also would be the rights of many children throughout the Country to obtain a truly desegregated education.[11]

Under the ratio "appropriate yardstick" (Petition, p. 5) as now urged by the government, faculty desegregation would not be measured by the consistently recognized standard as to whether the pattern of teacher assignment to any particular school is identifiable

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[10] For example, there were 14% Negro teachers in the Oklahoma City school system during the year 1964-1965. (*Dowell v. School Board of Oklahoma City*, 244 F. Supp. 971 at p. 976) while there were 78% Negro teachers in the District of Columbia school system during the school year 1966-1967; (*Hobson v. Hansen*, 269 F. Supp. 401, at p. 421); there are some districts in this Circuit with very few white teachers and other districts with very few Negro teachers.

[11] On page 8 of the Petition the government concedes that the ratio application would become Nationwide: "It is a matter that concerns virtually all school desegregation cases, in the North as well as in the South."

as tailored for a heavy concentration of either Negro or white pupils in the school, but rather by the ratio of white to Negro faculty members throughout the school system. This inevitably would result in a variable yardstick of utter confusion depending on the faculty composition in the various school districts throughout the Nation and in faculty desegregation being based on locality and subject to change from year to year rather than on well settled constitutional principles. Indeed the Fifth Circuit was wise in the case of *United States v. Board of Education of the City of Bessemer*, supra, in refusing to "tinker with the model decree" to the point of directing such an unwise, unfair and indeed, unconstitutional requirement.

III

THE REQUIREMENT OF FACULTY DESEGREGATION WITHOUT MATHEMATICAL OR RACIAL RATIO PERCENTAGES DOES NOT CONFLICT WITH PRIOR DECISIONS OF THE FIFTH CIRCUIT, OTHER CIRCUIT COURTS OF APPEAL, OR WITH APPLICABLE DECISIONS OF THE SUPREME COURT OF THE UNITED STATES.

As previously noted, and as stated in the panel decision of the Court of Appeals, the requirement of mathematical or racial percentage ratios was expressly rejected by the Fifth Circuit Court of Appeals in *United States v. Board of Education of the City of Bessemer*, supra.[12]

[12] Prior to the decision in *United States v. Board of Education of Bessemer*, supra, the Fifth Circuit Court of Appeals had refrained from requiring a fixed mathematical ratio in faculty desegregation in the cases of *United States v. Jefferson County Board of Education*, 372 F. 2d 836, aff'd en banc, 380 F. 2d 385 (5 Cir. 1967) cert. denied 389 U. S. 840, 19 L. Ed 2d 104, 88 S. Ct. 77 (1967); *Stell v. Board of Public Education for City of Savannah*, 387 F. 2d

The Eighth Circuit also rejected such a mathematical formula in the case of *Yarbrough v. Hulbert-West Memphis School District No. 4*, 380 F. 2d 962 (8 Cir. 1967).[18]

The Fourth Circuit in the case of *Bowman v. County Board of Charles City County, Virginia*, 382 F. 2d 326 at p. 329 (4 Cir. 1967) followed and applied the decision and uniform decree of the Fifth Circuit in the case of *United States v. Jefferson*, supra, and noted that:

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486 (5 Cir., December 1967); *Birdie Mae Davis v. Board of School Commissioners of Mobile*, 393 F. 2d 690 (5 Cir., March 1968). In accord with these decisions, the three Judge Court in the case of *Anthony T. Lee, et al., v. Macon County Board*, 267 F. Supp. 458 (M. D., Ala. 1967) involving 99 school districts throughout the State of Alabama, has imposed no mathematical ratio with regard to faculty desegregation.

[18] The Eighth Circuit in the *Yarbrough v. Hulbert-West Memphis School District No. 4*, supra, in discussing its prior decision in *Kelley v. Altheimer, Arkansas Public School District*, 378 F. 2d 483 (8 Cir. 1967) made the following statement:

> "We say in passing that this panel does not regard *Altheimer* as imposing any rigid mathematical formula which in certain situations could itself be arbitrary and without educational significance. We regard that case as one requiring a reluctant school board to get on with its task of achieving faculty and staff desegregation and assignment to comport with equitable and constitutional requirements divorced from racial considerations. Numbers and percentages per se are not the ultimate answer but, up to a point, they touch upon realities. This, we think, is the significance of *Altheimer*."

Thus, the Eighth Circuit did not impose as stringent a faculty requirement on a "reluctant school board" with but two schools, as the government now urges to be applied in Montgomery, Alabama, with 54 schools and to a school board which the District Court has on several previous occasions found to be complying in good faith with all orders of the Court.

"By that decree, (Jefferson-Uniform Decree) school boards are required to take affirmative steps to accomplish substantial desegregation of faculties in as many of the schools as possible for the 1967-68 school year and, wherever possible, to assign more than one member of the minority race to each desegregated faculty. As much should be required here."

The Fourth Circuit cautioned and concluded that:

"What is done on remand, however, must be done upon a supplemented record after an appraisal of the practical, administrative and other problems, if any, remaining to be solved and overcome."

The only Circuit Court of Appeals which has approved a faculty mathematical ratio requirement is the Tenth Circuit in the case of *Board of Education of Oklahoma City v. Dowell*, 375 F. 2d 158 (10 Cir. 1967), cert. denied 387 U. S. 931 (1967). The *Dowell* case, which contained the provision that the ratio was "*subject to a reasonable tolerance*" is further distinguished from the Montgomery County case in at least the following respects: (a) As pointed out by the District Court for the Western District of Oklahoma, the Negro faculty personnel, there involved, constituted but 14% of the total (*Dowell v. School Board of Oklahoma City*, 244 F. Supp. 971 at p. 976). The District Court decree there provided for "desegregation of all faculty personnel so that by 1970 the faculty ratio of whites to non-whites in each school would be the same as the faculty ratio of whites to non-whites in the entire school system, *with a reasonable tolerance of approximately* 10%." (Emphasis ours.) Thus, the Tenth Circuit in the *Dowell* case approved

faculty desegregation ranging from 4% to 24%. This is a far cry from a ratio of three to two. (b) The Board in the *Dowell* case had "presented no plan, it only reiterated its general intention to correct some of the existing unlawful practices." The case sub judice presents a far different situation with a school board that has a realistic desegregation plan which is effectively operating now. The two District Court cases, *Coppedge v. Franklin County Board of Education*, 273 F. Supp. 289 (E. D. N. C. 1967) aff'd 394 F. 2d 410 (4 Cir. 1968), and *Kier v. County Board of Augusta County, Virginia*, 249 F. Supp. 239 (W. D. Va. 1966), which require some degree of mathematical standard in faculty desegregation are each likewise clearly distinguished from the case at bar. In the *Coppedge* case there had been in fact, a case history of intimidation to the point of bomb threats and reprisals by the community toward retarding the desegregation plan. No such history exists in the Montgomery County system where we have an effectively operating plan. In the *Kier* case, the Court specifically noted that "of a total of over 10,000 school children, only slightly over 500 or 5% are Negro." It is obvious that problems and administrative burdens encountered by a school board with a relatively small student population, including only 5% Negroes, are not comparable to those of a system the size of Montgomery, Alabama.

Never has such a far reaching ratio balance requirement been directed by this Honorable Court. *Bradley v. School Board of Education of City of Richmond*, 382 U. S. 103, 15 L. Ed. 2d 187, 86 S. Ct. 224 (1965). It cannot be now asserted with validity that the de-

cision of the Court of Appeals is in conflict with applicable decisions of this Court, or that the decision of the Court of Appeals has departed from either the letter or the spirit of *Brown I*,[14] *Brown II*,[15] *Bradley*,[16] and *Green*.[17]

The proposed ratio provision as urged by the government contains built-in variables which, of course, will result in glaring inconsistences between the Circuits, between the States, and even between the various school districts within a given State.

IV

TO REQUIRE A SCHOOL BOARD WHICH IS MAKING MEANINGFUL AND IMMEDIATE PROGRESS IN FACULTY AND STAFF DESEGREGATION TO ADOPT "MATHEMATICAL RACIAL RATIO" AS "ULTIMATE OBJECTIVE" IS UNWARRANTED AND PREMATURE.

This Court in *Green v. County School Board of New Kent County*, supra stated:

> "It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress towards disestablishing state-imposed segregation."

The Court of Appeals in the opinion now before the Court stated:

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[14] *Brown v. Board of Education*, 347 U. S. 483, 98 L. Ed 873, 74 S. Ct. 686.

[15] *Brown v. Board of Education*, 349 U. S. 294, 99 L. Ed 1083, 75 S. Ct. 753.

[16] *Bradley v. School Board of Education of City of Richmond*, 382 U. S. 103, 15 L. Ed 2d 187, 86 S. Ct. 227.

[17] *Green v. County School Board of New Kent County*, 391 U. S. 430, 20 L. Ed 2d 716, 88 S. Ct. 1689.

"Nothing we say in this opinion shall be construed to mean that we authorize, permit, approve or condone the consideration of race or color as a factor in the employment, assignment, reassignment, promotion, demotion, or dismissal of full-time teachers, substitute teachers, student teachers or other professional staff members except to the extent that the same may be taken into account for the purpose of counteracting or correcting the effects of racial segregation in any dual school system. Any conduct by any board which is based on racial discrimination is unauthorized, disapproved and will not be tolerated. It is hoped and believed that experience will teach effective ways and means of achieving an ideal racial balance. School boards must not use excuses to delay the achievement of full faculty and staff desegregation." (400 F. 2d 1 at p. 8.)

This school board has demonstrated meaningful and actual progress in desegregating the full-time faculties in 53 out of 54 schools in this County, with 212 full-time faculty members presently teaching in schools where their race is in the minority. Much actual progress has already been achieved in the area of substitute teachers, student teachers and night school faculty desegregation.

The racial ratio requirement urged by the government, with its very questionable merit, built-in inconsistencies and inequities, is not warranted under the facts of this case.

The Court of Appeals has established 1970 as the completion date for full compliance.[18]

[18] *United States v. Board of Education of Bessemer, et al*, 396 F. 2d 44 at p. 52 (5 Cir. 1968).

Especially in view of the progress already demonstrated by this school board, it would be wise to assess the progress of the school board on such "completion date" rather than to now speculate as to what may or may not be then required.

As this Court stated in the case of *Maryland v. Baltimore Radio Show, Inc.*, 338 U. S. 912, 94 L. Ed 562, 70 S. Ct. 252, in denying the Petition for a Writ of Certiorari there requested:

> "Wise adjudication has its own time for ripening."

We do hereby state to this Court that the Montgomery County Board of Education will completely desegregate the faculty and staff of this system without the imposition of the arbitrary and educationally unsound racial ratio requirement.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIXES

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

Arlam Carr, et al., plaintiffs,	:	
Vs.	:	
Montgomery County Board of Education, et al., defendants,	:	Civil Action No. 2072-N
United States of America, amicus curiae.	:	

Pursuant to the Decree and Order of this Court dated June 1, 1967, and the Decree and Order of this Court dated February 24, 1968, as amended March 2, 1968, and specifically in compliance with Section VII, REPORTS TO THE COURT, Subsection A. *Report of Choice Period;* Subsection B. *Report on Faculty Assignments;* and Subsection C. *Report After School Opening,* of said Order dated June 1, 1967, and in compliance with Section V, REPORTS, Subsection A. *Reports Previously Ordered,* Subsection B. *Faculty,* B-1, B-2, B-3 and B-4, Subsection C. *Transportation,* and Subsection D. *Jefferson Davis High School and Other New Schools;* comes now the defendants in the above styled cause and files this report with attached Exhibits.

HILL, ROBISON, BELSER AND PHELPS

By s/V. H. Robison
Attorneys for Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served by hand mail delivery a copy of this Report with Exhibits attached on Mr. Fred D. Gray, attorney of record for the Plaintiffs at his office at 352 Dexter Avenue, Montgomery, Alabama, and on Mr. Ben Hardeman, United States Attorney for the Middle District of Alabama, Northern Division, at his office in the Federal Building, Montgomery, Alabama, representing the United States of America, Amicus Curiae, on this 16th day of September, 1968.

s/V. H. ROBISON

MONTGOMERY PUBLIC SCHOOLS

TEACHING STAFF ASSIGNMENTS AS OF SEPTEMBER 15, 1968

	School	Negro	White	Total	Grades
1.	Baldwin Jr. High	4*	27	31	7-9
2.	Bear	2*	14	16	1-6
3.	Bellinger Hill	1*	5	6	1-6
4.	Bellingrath Jr. High	6*	40	46	1-9
5.	Billingslea	7	1*	8	1-6
6.	Booker Washington Elementary	14	4*	18	1-6
7.	Booker Washington Jr. High	21	6*	27	7-9
8.	Booker Washington Sr. High	26	7*	33	10-12
9.	Capitol Heights Elementary	3*	16	19	1-6
10.	Capitol Heights Jr. High	4*	31	35	7-9
11.	Carver Elementary	21	5*	26	1-6
12.	Carver Jr. High	20	4*	24	7-9
13.	Carver Sr. High	43	8*	51	10-12
14.	Catoma	1*	7	8	1-6
15.	Chilton	1*	5	6	1-6
16.	Chisholm	3*	21	24	1-6
17.	Cloverdale Jr. High	6*	35	41	1-9
18.	Crump	1*	10	11	1-6
19.	Daisy Lawrence	18	6*	24	1-6
20.	Dalraida	2*	15	17	1-6
21.	Dannelly	4*	20	24	1-6
22.	Davis	3*	18	21	1-6
23.	Dunbar High	41	5*	46	1-12
24.	Fews	16	5*	21	1-6
25.	Flowers	3*	20	23	1-6
26.	Floyd Jr. High	6*	37	43	1-9
27.	Forest Avenue	1*	9	10	1-6
28.	Georgia Washington High	40	7*	47	1-12

	School	Negro	White	Total	Grades
29.	Goode Street	3*	7	10	1-6
30.	Goodwyn Jr. High	6*	37	43	7-9
31.	Hale	19	3*	22	1-6
32.	Harrison	3*	15	18	1-6
33.	Hayneville Road Jr. High	41	8*	49	1-9
34.	Head	2*	14	16	1-6
35.	Highland Avenue	1*	11	12	1-6
36.	Highland Gardens	4*	20	24	1-6
37.	Houston Hill Jr. High	13	6*	19	7-9
38.	Jefferson Davis High	7*	29	36	10-12
39.	Johnson	3*	17	20	1-6
40.	Lanier High	9*	81	90	10-12
41.	Lee High	10*	72	82	10-12
42.	Loveless Jr. High	38	5*	43	1-9
43.	McDavid	17	4*	21	1-6
44.	McIntyre Jr. High	31	9*	40	1-9
45.	MacMillan	1*	10	11	1-6
46.	Madison Park	8	2*	10	1-6
47.	Montgomery County High	2*	19	21	1-12
48.	Morningview	2*	15	17	1-6
49.	Paterson	20	6*	26	1-6
50.	Pendar Street	3*	15	18	1-6
51.	Pike Road Jr. High	1*	7	8	1-9
52.	Pine Level		3	3	1-6
53.	Pintlala Jr. High	2*	7	9	1-9
54.	Southlawn	1*	9	10	1-6
	Speech Therapists	1**	4**	5**	
		566	823	1,389	
		111*	101*	212*	

* Teaching in Minority Assignments

** Teach in all elementary schools

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

ARLAM CARR, ET AL., PLAINTIFFS,	:	
VS.	:	
MONTGOMERY COUNTY BOARD OF EDUCATION, ET AL., DEFENDANTS,	:	CIVIL ACTION
	:	No. 2072-N
UNITED STATES OF AMERICA, AMICUS CURIAE.	:	

In compliance with the Orders of this Court, Part VII of the June 1, 1967 Order and Part V of the February 24, 1968 Order of this Court, "REPORTS," the following information is submitted as attached exhibits:

"Exhibit A"—Report of Substitute Teachers between September 15 and December 15, 1968.

"Exhibit B"—New Teachers Hired Between September 15 and December 15, 1968.

"Exhibit C"—Report of Teacher Assignments in Night Schools between September 15 and December 15, 1968.

"Exhibit D"—Report of Student Teacher Assignments as of December 15, 1968.

HILL, ROBISON, BELSER AND PHELPS

By s/V. H. ROBISON

Attorneys for the Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served by hand mail delivery a copy of the report with exhibits attached on Mr. Ben Hardeman, United States Attorney for the Middle District of Alabama, Northern Division, at his office in the Federal Building, Montgomery, Alabama, representing the United States of America, Amicus Curiae, and by ordinary mail, postage prepaid, on Fred D. Gray, Attorney of Record for the plaintiffs, at his office at 352 Dexter Avenue, Montgomery, Alabama, all on this the 16th day of December, 1968.

s/V. H. ROBISON

EXHIBIT A

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS

REPORT OF SUBSTITUTE TEACHERS BETWEEN SEPTEMBER 15 AND DECEMBER 15, 1968

Name of School	Days Taught By Negro Substitute Teacher	Days Taught By White Substitute Teacher
Baldwin Jr. High	6*	87
Bear	3*	12
Bellinger Hill	2*	3
Bellingrath Jr. High	25*	99
Billingslea	6	5*
Booker Washington Elem.	24	25*
Booker Washington Jr. High	39	21*
Booker Washington Sr. High	31	26*
Capitol Heights Elem.	8*	19
Capitol Heights Jr. High	17*	64
Carver Elementary	43	11*
Carver Jr. High	40	14*
Carver Sr. High	34	50*
Catoma	26*	8
Chilton	0	4
Chisholm	4*	47
Cloverdale	20*	63
Crump	4*	11
Daisy Lawrence	15	2*
Dalraida	5*	23
Dannelly	12*	31
Davis	11*	41
Dunbar	55	0
Fews	14	18*
Flowers	4*	48
Floyd	17*	75
Forest Avenue	3*	14
Georgia Washington	18	35*
Goode Street	10*	29

Name of School	Days Taught By Negro Substitute Teacher	Days Taught By White Substitute Teacher
Goodwyn Jr. High	21*	62
Hale	43	35*
Harrison	3*	15
Hayneville Road	43	8*
Head	4*	38
Highland Avenue	3*	10
Highland Gardens	9*	31
Houston Hill Jr. High	20	2*
Jefferson Davis High	12*	36
Johnson	3*	23
Lanier	16*	90
Lee	34*	45
Loveless	128	27*
McDavid	33	17*
McIntyre	96	8*
MacMillan	5*	22
Madison Park	15	4*
Montgomery County High	0	33
Morningview	3*	27
Paterson	43	10*
Pendar Street	8*	35
Pike Road	0	0
Pine Level	0	0
Pintlala	0	5
Southlawn	2*	8
	1,040	1,476
	300*	318*

In compliance with Section V, B. 2 of the Supplemental Plan.

* Teaching in Minority Assignments

EXHIBIT B

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS

CITY AND COUNTY

MONTGOMERY, ALABAMA

SUPERINTENDENT'S OFFICE DECEMBER 15, 1968

NEW TEACHERS HIRED BETWEEN SEPTEMBER 15 AND DECEMBER 15, 1968

	Name	Race	School
1.	Louise H. Nachman	White*	Paterson Elem.
2.	Ether D. Boyd	Negro	Booker Washington Sr.
3.	Judy D. Johnson	White	Lanier Sr. High
4.	Odell S. Graham	Negro	Loveless Elem.
5.	Jean P. Tashlik	White	Baldwin Jr. High
6.	Susan Diane Setzer	White	Crump Elem.
7.	Carol deBlois	White*	Hale Elem.
8.	Pamela G. Priest	White	Jefferson Davis Sr.
9.	Dorothy Leona Jones	White	Baldwin Jr. High
10.	Ann Griswold	White	Children's Center
11.	Lydia S. Williams	Negro*	Davis Elem.
12.	Virginia F. Sewell	White	Forest Ave. Elem.
13.	Charles L. Williamson	White	Capitol Hgts. Jr. High
14.	Rosa R. Kelly	White*	McIntyre Elem.
15.	Dorothy R. Pegues	White	Southlawn Elem.
16.	Rebecca Ann McArthur	White	Goode Street Elem.
17.	Marian Shultz Stephenson	White	Lanier Sr. High

* Teaching in Minority Assignments

EXHIBIT C

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS
CITY AND COUNTY
MONTGOMERY, ALABAMA

REPORT OF TEACHER ASSIGNMENTS IN NIGHT SCHOOLS BETWEEN SEPTEMBER 15 AND DECEMBER 15, 1963

School	White Teachers	Colored Teachers	Total
Booker Washington	4*	9	13
Carver	4*	12	16
Lanier	12	3*	15
Lee	7	3*	10
Total	27	27	54
	8*	6*	

* Teaching in Minority Assignments

EXHIBIT D

APPENDIX B

MONTGOMERY PUBLIC SCHOOLS

REPORT OF STUDENT TEACHER ASSIGNMENTS AS OF DECEMBER 15, 1963

Name of School	White Student Teachers	Negro Student Teachers
Baldwin Junior High	1	
Bear Elementary	2	1*
Booker Washington Elementary		6
Booker Washington Jr. High		7
Booker Washington Sr. High	1*	12
Capitol Heights Elementary		1*
Capitol Heights Jr. High	3	
Carver Elementary		2
Carver Junior High	1*	2
Carver Senior High		11

Chisholm Elementary	1	
Cloverdale Junior High	2	
Crump Elementary		1*
Daisy Lawrence Elementary		3
Dannelly Elementary	3	
Davis Elementary	4	1*
Dunbar		3
Fews Elementary		3
Flowers Elementary	1	1*
Floyd Junior High	3	
Georgia Washington		3
Goode Street Elementary		1*
Goodwyn Junior High	3	
Hale Elementary		2
Hayneville Road Junior High		10
Highland Gardens Elementary	1	1*
Houston Hill Junior High	1*	7
Jefferson Davis Senior High	2	2*
Johnson Elementary	2	1*
Lanier Senior High	6	4*
Lee Senior High	3	4*
Loveless Junior High		9
McDavid Elementary	3*	2
McIntyre Junior High		4
MacMillan Elementary		1*
Montgomery County High	2	
Paterson Elementary	1*	2
Pendar Street Elementary		1*
Southlawn Elementary		1*
	46	109
	7*	21*

* Teaching in Minority Assignments